Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992	)))))	MB Docket No. 05-311

COMENTS OF AD HOC TELECOM MANUFACTURER COALITION

These Comments are filed in response to the FCC's Notice by 48 companies engaged in telecom manufacturing. As discussed below, the Commission needs to reform the cable TV franchising process in order to fulfill its statutory obligation to remove regulatory impediments to broadband investment. Franchising reform is necessary to achieve this obligation since certain aspects of the franchising process constitute a significant barrier to broadband investment which in turn constrains growth throughout the high tech manufacturing industry and harms the U.S. economy.

DISCUSSION

If they proceed as announced, the plans of telephone companies to undertake the rapid and widespread deployment of new FTTx broadband networks in order to provide multi-channel video service as well as voice and broadband data could lead to a historic increase in the manufacture and sale of a nearly infinite variety of high tech products.[1]

---

[1] AT&T and Verizon have announced that on a combined basis they hope to spend more than $3 billion on FTTx network infrastructure this year and even more in 2007 and 2008. *See* audio recording of AT&T Analyst Meeting, Jan. 31, 2006, avail. at http://phx.corporate-ir.net/phoenix.zhtml?p=irol-eventDetails&c=113088&eventID=1192543 (stating that AT&T has budgeted $1.4 billion for FTTx infrastructure capex in 2006 and a total of $4.4 billion for the three years ending December 2008); E. Gubbins, "Lehman: Verizon may want to rethink FTTP", Telephony Online, Jan. 6, 2006 (estimating that Verizon may spend as much as $2 billion on FTTx during 2006 and each of the following four years).

For example, companies that manufacture the core FTTx network infrastructure - fiber cable and electronics such as optical line terminals, optical splitters, and optical network terminals - obviously would benefit from the rapid and broad deployment of FTTx network infrastructure. But significant spending on FTTx network infrastructure would create tremendous opportunities for companies that manufacture products in numerous *other* high tech markets too. For example, the existence of new FTTx networks would create opportunities to make the wide variety of add-on network electronics that would be required in order to provide consumers with the new video, voice, and broadband data services that those networks make possible. New FTTx networks likewise would create opportunities for manufacturers to develop scores of new CPE products necessary to make these new services functional, such as modems, TV set top boxes, DVRs, gateways, routers, video displays, and backup power supplies, to name just a few. New FTTx networks likewise would create opportunities to make and sell new types of network monitoring and test equipment, as well as a huge variety of new software, such as software used to provide network security, network management, and OSS. New business opportunities for the makers of semiconductors and other electronic components also would arise. In short, a significant carrier FTTx capital investment program could produce extraordinary opportunities to produce and sell a large variety of new products in *numerous* segments of the high tech manufacturing industry. Our companies represent a broad cross section of the high tech manufacturing industry since we manufacture fiber cable, fiber electronics, semiconductors, test equipment, backup power equipment, a wide variety of CPE and software, as well as numerous other products used by the telecom industry.

Unfortunately, the cable TV franchising process threatens to slow the carriers' FTTx capex programs, thereby slowing competition in the video service market and reducing output throughout the high tech manufacturing industry. Last October, for example, ADC Telecom reported that due partly to the franchising process, it would eliminate 400 jobs in the final quarter of its fiscal year because telephone company customers had been unable to deploy the FTTx infrastructure as rapidly as had been anticipated due in part to roadblocks in the franchising process.[2] Corning reported that its sales declined in the July-September 2005 quarter for the same reason.[3] And the CEO of Tellabs, another large supplier of FTTx products, likewise reported late last month that the FTTx product market had "its ups and downs [in 2005] as the customer buys, stores, deploys, exhausts inventory and buys [again]."[4] Wall Street analysts also agree that the telcos' FTTx capital spending may be inhibited unless the franchising process is reformed. For example, Lehman Brothers analyst Blake Bath stated in a January 4, 2006 Research Note that, although Verizon has denied it, he thinks Verizon might find it necessary to "scale back its fiber build [plans due in part to regulatory . . . [barriers] associated with rolling out [its FiOS] video [service]."

In the present proceeding, the Commission should reform the cable TV franchising process in two ways in order to speed competition in the video service market and facilitate broadband investment, which in turn will stimulate growth throughout the high tech

---

2 "ADC Updates Financial Outlook for the Fourth Fiscal Quarter of 2005", News Release dated Oct. 5, 2005, avail. at http://www.adc.com/investorrelations/newsandcommunications/newsreleases/show.jsp?RELEASEID=175529.

3 Corning 10-Q for the July-Sept. 2005 quarter at 35, filed Nov. 2, 2005.

4 K. Prabhu, Pres. and CEO of Tellabs, during a Jan. 26, 2005 conference call discussing that company's 4th quarter 2005 financial results.

manufacturing industry. First, it should substantially shorten the process for a new video entrant to obtain the franchise that is necessary to provide cable service in each of the country's 30,000 municipalities. It should do this by holding that a franchising entity violates FCC policy if it fails either to approve or deny a franchise within 30 days of the date an application is filed by an applicant that already possesses authority to deploy transmission infrastructure in public rights-of-way.[5] Second, it should preempt a franchising authority from requiring that a new entrant in the video market spend money on anything not directly related to rights-of-way management such as requiring that it (a) pay ongoing costs to operate PEG channels, (b) deploy private transmission networks connecting schools or other government buildings ("institutional network") or (c) expand video service to specific neighborhoods by arbitrary deadlines.

The Commission should reform these two aspects of the franchising process because both undeniably harm high tech manufacturing by slowing telco entry into the video market. A lengthy franchise application process obviously slows telco entry into the video market. In fact, the existing process takes so much time that AT&T testified before Congress last fall that unless the time is shortened considerably, its well publicized plan to deploy video infrastructure to 18 million households within three years is in jeopardy:

> "If we have to go through the franchise process that exists today in the communities we intend to serve, it will take us . . . 40 years [to obtain all of the franchises we need even assuming that] we can negotiate [franchises]

---

5 Today, it typically takes roughly one year to obtain a franchise to provide video service in a given community. For example, BellSouth has reported that it takes an average of 11 months to obtain a franchise in a typical community (Comments of BellSouth, MB Dkt. No. 05-255 at 3 and Exh. A, filed Sept. 19, 2005), and Verizon has stated that it takes between six and 18 months on average to obtain a franchise. "Verizon to Accelerate Availability of FiOS TV Service in Texas", News Release dated Sept. 30, 2005, available at http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=92906.

with the 2,200 communities, one a week, which is . . . impossibl[ly optimistic]."[6]

Experience shows that requiring a new entrant in the video market to spend its risk capital on projects desired by the franchisor likewise inhibits market entry and thus harms high tech manufacturing by changing the economics of market entry. For example, requiring a new entrant to extend video service to specific neighborhoods by arbitrary deadlines often changes so dramatically the economics of providing service in the community as a whole that the company decides not to deploy video infrastructure *anywhere* in the community.[7] Thus, SureWest decided not to deploy any video infrastructure in certain communities near Roseville, California due to neighborhood build-out requirements in those communities,[8] Consolidated Telephone Co. delayed video infrastructure deployment in certain Texas communities for the same reason,[9] and Verizon has stated that legislation before the New Jersey legislature requiring it to provide cable service in all of the state's 526 towns within six years in return for a statewide franchise

6 Testimony of J. Ellis, AT&T's Sr. Exec. V.P. and Gen Counsel, Nov. 9. 2005 hearing before U.S. House Telecom Subcomm. (responding to questioning by Rep. E. Whitfield). See also B. Evans, CEO Cavalier Teleph. Co. Test. Before Senate Comm. on Commerce, Science and Transp., Jan 31, 2006 at 6 ("The time, energy, and expense [of complying with existing franchising requirements] would stall our deployment, and would result in Cavalier being forced to simply forgo service in several . . . communities"). Unfortunately, it appears some franchising authorities may not understand that a process taking eight or 10 or 12 months to grant a cable franchise is unreasonable. For example, in early-filed comments in this proceeding, Manatee County, Florida brags that it took nine months for that county to grant a cable franchise to Verizon. *See* Manatee County Comments at 5-6, filed Jan. 3, 2006 (noting that Verizon filed its application in November 2004 and that the country granted the application at the end of Aug. 2005, and bragging that this nine-month-long procedure was two months shorter than the 11-month-long process faced by another recent franchise applicant in that county). *See also* Comments of Los Banos, Calif. at 1, filed Jan. 12, 2006 (noting that it took that city nine months to grant a franchise to Comcast, an amount of time which it claims is "efficient").

7 Community-wide buildout requirements can have a substantial impact on the economics of providing service for several different reasons. For example, a telephone company's existing wire centers may not cover certain neighborhoods or population density in parts of the franchise area may make it uneconomic to extend the new broadband FTTx network there.

8 *See* Reply of USTelecom Ass'n at 6 and 8, MB Dkt. No. 05-255, Oct. 11, 2005.

9 *Id.*

"would prevent us from" applying for a statewide franchise in that state.[10] Video competition and the high tech manufacturing industry also may be inhibited by requiring a new video entrant to spend large sums on projects desired by the franchisor but having nothing to do with management of public rights-of-way since such requirements may impose uneconomic costs on the new entrant. For example, even if only half of the nation's roughly 30,000 franchising authorities required new entrants to deploy an institutional network and pay ongoing PEG channel operating expenses, the cost easily could be several billion dollars, an amount that indisputably would make it uneconomic to enter the video market in many communities.[11]

Section 621(a)(1) of the Communications Act authorizes the FCC to take the action we seek since that statute empowers the agency to take whatever action is necessary to ensure that franchising authorities do not "unreasonably" delay the offering of video service. As discussed above, video service is unreasonably delayed (and thus the high-tech manufacturing industry is unnecessarily hurt) by a franchising process that lasts many months and by franchising policies that increase the cost to provide service by requiring that the new video entrant spend money not directly related to rights-of-way management.

Section 706 of the Telecommunications Act of 1996 *also* authorizes the Commission to take the action we request. That provision requires the FCC to "encourage the deployment . . .of advanced telecommunications capability to all Americans . . . by[, among other things,] remov[ing] barriers to infrastructure investment", and it defines

10 "Verizon's TV dream hits snag", NorthJersey.com, Nov. 29, 2005.

11 Two weeks ago, Verizon's Chairman and CEO was quoted, in referring to the speed at which it will build its FTTx network, as stating that if the government does not "clean up this [franchising] process. . . we are going to have to question how much we can do and how fast we can do it." *See* A. Mohammed, "Verizon Lays It on the Line", Wash. Post, Feb. 1, 2006 A1 at D10.

"advanced telecommunications capability" as "any high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications. . . ." The FTTx networks that new entrants are seeking to deploy indisputably are designed to provide "advanced telecommunications capability" as defined in Section 706, and the franchising requirements we urge the FCC to preempt demonstrably are "barriers to infrastructure investment" as discussed above.

The Commission should take one other action in this proceeding to eliminate barriers to video competition and thereby speed video competition and help stimulate high tech manufacturing: it should rule that no cable TV franchise is necessary to provide video service either where –

- The transmission equipment that will be used to provide video service (i) is deployed in public rights-of-way by a company that already has authority to deploy that equipment and (ii) will be used to provide voice or data services in addition to video service, [12] or

- the video offering will be provided over a two-way switched network with the architecture and interactive characteristics of the Lightspeed network now being deployed by AT&T.[13]

By its terms, the Act requires that a video service provider obtain a cable franchise *only* if its service constitutes "cable service" provided over a "cable system" as those terms are defined in the Act. A company providing video service in any of the ways described above

---

12 *See* CenturyTel Comments at 4-6 (MB Dkt. No. 05-255, Sept. 19. 2005).

13 *See* SBC (now renamed AT&T) Comments, Attachment titled "The Impact and Legal Propriety of Applying Cable Franchise Regulation to IP-Enabled Video Services" (MB Dkt. No. 05-255, Sept. 19. 2005).

does *not* provide "cable service", and the network over which the service is provided is not a "cable system" for reasons that have been fully briefed elsewhere.[14]

CONCLUSION

The Commission should reform the cable TV franchising process in the manner discussed above in order to speed competition in the provision of multi-channel video services and comply with its obligation to eliminate regulatory barriers to broadband investment, which in turn will stimulate growth throughout the high tech manufacturing industry.

Respectfully submitted,

Jack Field, VP Global Connectiity Solutions
ADC Telecommunications
1187 Park Place
Shakopee, MN 55379

Jack Van Oosterhout, President and CEO
Sharp Laboratories of America
5750 NW Pacific Rim Blvd.
Camas, WA 98607

Thomas F. Beddow, VP Public Affairs
3M Company
1425 K Street, NW, Ste. 300
Washington, DC 20005

Kenichi Otsuki, Pres. and CEO
Hitachi Telecom (USA), Inc.
3617 Parkway Lane
Norcross, GA 30092

Brian N. DiLascia, V. Pres. and Gen. Mgr.
Prysmian Communications Cables and Systems USA, LLC
700 Industrial Drive
Lexington, SC 29072

Raouf Y. Halim, CEO
Mindspeed Technologies, Inc.
4000 MacArthur Blvd., East Tower
Newport Beach, CA 92660-3095

Ric Johnsen, Pres. and CEO
Alloptic Inc.
2301 Armstrong Street, Ste 101
Livermore, CA 94551

Abhay M. Joshi, CEO
Discovery Semiconductors, Inc.
119 Silvia Street
Ewing, NJ 08628

[14] *See* notes 12-13, *supra*.

Mauro Bonomi, CEO
Minerva Networks, Inc.
2111 Tasman Drive
Santa Clara, CA 95054

Mary Andringa, Pres.and CEO
Vermeer Manufacturing Company
1210 Vermeer Road East
Pella, IA 50219

Edgar M. Buttner, CEO
Coastcom
1151 Harbor Bay Parkway
Alameda, CA 94502-6511

Robert J. Robbins, President
Electrodata, Inc.
23020 Miles Road
Bedford Heights, OH 44128

David McGraw, President
Suttle Apparatus Corporation
223 South Main Street
Hector, MN 55342

Brian Paul, Chief Financial Officer
Actiontec Electronics, Inc.
760 North Mary Avenue
Sunnyvale, CA 94085

Richard A. Orriss, President and CEO
Leapstone Systems, Inc.
220 Davidson Avenue
Somerset, NJ 08873

Jorge A. Cano, President
Alcon Technologies, Inc.
11201 Hampshire Avenue South
Bloomington, MN 55438

Robert F. Smith, President
Arnco Corporation
860 Garden Street
Elyria, OH 44035

Lyle G. Jacobson, President and CEO
Katolight Corporation
100 Power Drive
Mankato, MN 56001

Benson Shen, CEO
Lightel Technologies, Inc.
1034 Central Avenue South
Kent, WA 98032

Brad E. Herr, President
AC Data Systems, Inc.
806 West Clearwater Loop, Ste C
Post Falls, ID 83854

Samuel D. Davis, President
Telesync, Inc.
5555 Oakbrook Pkwy, Ste 100
Norcross, GA 30093

William G. Johnson, Jr., Pres. and CEO
NorthStar Communications Group, Inc.
1900 International Park Drive
Birmingham, AL 35243

Eric A. Norland, President
Norland Products Inc.
2540 Route 130, Ste. 100
Cranbury, NJ 08512

Joseph D. Evankow, Jr., Director
FiberControl
1208 Highway 34, Tower No. 1
Aberdeen, NJ 07747

Andrew Marsh, President and CEO
Valere Power, Inc.
661 North Plano Road, Ste 300
Richardson, TX 75081

Gary Davis, Chairman and CEO
Pannaway Technologies
215 Commerce Way
Portsmouth, NH 03801

Peter R. McIntyre, EVP Mktg and Sales
Xecom, Inc
374 Turquoise Street
Milpitas, CA 95035

Daniel Kim, CFO
Kotura, Inc.
Daniel Kim
Monterey Park, CA 91754

Warren T. Barker, President
Westronic Systems, Inc.
Warren T. Barker
Calgary, Alberta T2E 8N6

Michael C. Stephens, President and CEO
CBM of America, Inc.
1455 W. Newport Center Drive
Deerfield Beach, FL 33442

William L. Martin III, CEO
White Rock Networks, Inc.
1301 West Pres. George Bush Freeway
Richardson, TX 75080

Daryl Ingalsbe, President
Independent Technologies Inc.
1142 Miracle Hills Drive
Omaha, NE 68154

John G. Heindel, CEO
PECO II, Inc.
1376 State Route 598
Galion, OH 44833

Dr. Simin Cai, Pres. and CEO
NSG America, Inc.
28 Worlds Fair Drive
Somerset, NJ 08873

Chris Wellens, Pres. and CEO
InterWorking Labs, Inc.
108 Whispering Pines Drive, Ste 115
Scotts Valley, CA 95066-4792

Michael Burke, Sales Manager
HOMACO
Ortronics/Legrand
8406 HollyBrook Lane
Tinley Park, IL 60477

Manfred Laidig, President
BTECH Inc.
Manfred Laidig
Rockaway, NJ 07866

Brad Radichel, President
Condux International, Inc.
Brad Radichel
Mankato, MN 56002-0247

Harry J. Carr, CEO
Simpler Networks Corp.
90 Washington Valley Road
Bedminster, NJ 07921

Steven D. Youtsey, CEO
PCT International, Inc.
1715 Sunrise Blvd.
Gilbert, AZ 85233-5032

Jeffrey D. Farmer, VP Global Sales
Polatis, Inc.
5 Fortune Drive
Billerica, MA 01821

Klaus Bollman, President
Nextus Inc.
101 Halmar Cove
Georgetown, TX 78628

Tuvia Barlev, CEO
Actelis Networks
6150 Stevenson Blvd.
Fremont, CA 94538

Peter P. Savage, President and CEO
Hammerhead Systems Inc.
640 Clyde Court
Mountain View, CA 94043

Ramzi Sawires, Director of Marketing
Xponent Photonics, Inc.
425 East Huntington Drive
Monrovia, CA 91016-3632

Michael C. Engle, VP Sales & Marketing
Microwave Networks Inc.
4000 Greenbriar Drive
Stafford, TX 77477

John L. Vette, CEO
SNC Manufacturing Company Inc.
101 W. Waukau Avenue
Oshkosh, WI 54902-7299

A. William Berkman, Jr., CEO
ClearSight Networks, Inc.
46401 Landing Parkway
Fremont, CA 94538-7563